No. 80-1530

APR

IN THE

Supreme Court of the United States

October Term, 1980

BOISE BASEBALL CLUB, INC.,
an Idaho Corporation
Petitioner

v.

BOWIE K. KUHN, *et al.*
Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES P. GARNER
WARREN DAANE
BAKER & HOSTETLER
3200 National City Center
Cleveland, Ohio 44114

LOUIS L. HOYNES, JR.
WILLKIE FARR & GALLAGHER
One Citicorp Center
153 East 53rd Street
New York, New York 10022

Attorneys for Respondents

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

QUESTIONS PRESENTED

The "Questions Presented" in the Petition (pp. 2-3) are statements rather than questions. The questions are:

1. Whether, at the request of a minor league baseball club seeking review of a decision of a Circuit Court of Appeals, this Court should overturn its decisions in *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); and *Flood* v. *Kuhn,* 407 U.S. 258 (1972), holding that the business of professional baseball is not within the scope of the federal antitrust laws unless and until Congress determines otherwise?

2. Whether the Court of Appeals was correct in holding that Petitioner's claim that the major leagues have an implied common law duty to allow the minor leagues to function independently was properly rejected by the District Court?

3. Whether the Court of Appeals was correct in holding that there was no tortious interference with negotiations for contract when, upon the Oakland Club terminating its player development contract with Petitioner, Petitioner was unable to transfer its team to Medicine Hat, as the Oakland Club had the right to terminate the contract and was under no duty to continue it?

4. Whether the Court of Appeals was correct in holding that Petitioner had no claim against Respondents based on Professional Baseball Rule 1(a) resulting from the expansion of the American League into Seattle, as all conditions of Rule 1(a) were complied with, and any claim Petitioner might have would be against the Northwest League of which it had been a member?

PARTIES

The Respondents named in the Petition are Bowie K. Kuhn, individually and as Commissioner of Baseball; Leland MacPhail, individually and as President of the American League of Professional Baseball Clubs; Charles Feeney, individually and as President of the National League of Professional Baseball Clubs; Atlanta Braves, Inc.; Chicago National League Baseball Club; Cincinnati Reds, Inc.,; Houston Sports Association, Inc.; Los Angeles Dodgers, Inc.; Metropolitan Baseball Club, Inc.; Philadelphia National League Club; Pittsburgh Athletic Club, Inc.; St. Louis National Baseball Club, Inc.; San Francisco Baseball Club, Inc.; Golden West Baseball Co.; Baltimore Baseball Club, Inc.; John E. Fetzer, Inc.; Montreal Baseball Club, Ltd.; Oakland Athletic Division of Charles O. Finley, Inc.; Texas Rangers, Ltd.; Kansas City Royals Baseball Corp.; Milwaukee Brewers Baseball Corporation, Inc.; New York Yankees, a partnership; and Chicago White Sox Baseball Corp., Inc.

In addition to these Respondents, the Complaint also named as defendants the Boston Red Sox; Cleveland Indians, Inc.; Minnesota Twins, Inc.; and San Diego Padres Baseball Club.

INDEX

	Page
QUESTIONS PRESENTED	(i)
STATEMENT OF THE CASE	1
ARGUMENT	5
I. THIS COURT HAS CONSISTENTLY HELD THAT THE BUSINESS OF BASEBALL IS NOT SUBJECT TO THE FEDERAL ANTITRUST LAWS, UNLESS AND UNTIL CONGRESS DETERMINES OTHERWISE	6
II. THE BUSINESS OF BASEBALL IS NOT SUBJECT TO STATE REGULATION BY IMPOSITION OF ANY IMPLIED DUTY UNDER STATE COMMON LAW	10
III. THERE WAS NO TORTIOUS INTERFERENCE WITH PETITIONER'S CONTRACT NEGOTIATIONS	11
VI. PETITIONER'S CLAIM BASED ON PROFESSIONAL BASEBALL RULE 1(a), AN INTERNAL BASEBALL RULE, PRESENTS NO QUESTION FOR REVIEW BY THIS COURT	12
CONCLUSION	13

TABLE OF AUTHORITIES

Cases Cited **Page**

Corbett v. *Chandler*,
346 U.S. 356, *reh. den.*
346 U.S. 917 (1953) 5, 7

Federal Baseball Club of Baltimore, Inc.
v. *National League*,
259 U.S. 200 (1922) 5, 6, 7, 9, 10

Finley v. *Kuhn*,
569 F.2d 527 (7th Cir. 1978), *cert. denied*,
439 U.S. 876 (1978) 6

Flood v. *Kuhn*,
407 U.S. 258 (1972) 5, 6, 9, 10, 11

Kowalski v. *Chandler*,
346 U.S. 356, *reh. den.*
346 U.S. 917 (1953) 5, 7

Portland Baseball Club, Inc. v. *Baltimore*
Baseball Club, Inc.,
282 F.2d 680 (9th Cir. 1960) (per curiam) 7

Portland Baseball Club, Inc. v. *Kuhn*,
368 F. Supp. 1004 (D. Or. 1971), aff'd
per curiam, 491 F.2d 1101 (9th Cir. 1974) 6, 13

Radovich v. *National Football League*,
352 U.S. 445, *ren. den.*
353 U.S. 931 (1957) 8

Salerno v. *American League*,
429 F.2d 1003 (2nd Cir. 1970), *cert. denied*,
400 U.S. 1001 (1971) 6

Seattle Rainiers Baseball Club
v. *American League*,
Slip opinion, No. 77-7291 (2nd Cir. 10/17/77),
affirming No. 77-987 (S.D.N.Y. 5/10/77) 4, 12, 13

Page

State v. *Milwaukee Braves, Inc.*,
31 Wis. 699, 144 N.W. 2d 1 (1966), *cert. den. sub nom. Wisconsin* v. *Milwaukee Braves, Inc.*,
385 U.S. 990 (1966) 7

Toolson v. *New York Yankees, Inc.*
346 U.S. 356, *reh. den.*
346 U.S. 917 (1953) 5, 6, 7, 8, 10

Statutory Provisions

Sherman Act, 15 U.S.C. §§ 1, 2 4

Federal Arbitration Act, 9 U.S.C. § 9 4

IN THE

Supreme Court of the United States

October Term, 1980

No. 80-1530

BOISE BASEBALL CLUB, INC.,
an Idaho Corporation

Petitioner

v.

BOWIE K. KUHN, *et al.*

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

"Organized Baseball" is a system of self-regulating interdependent baseball clubs and leagues. At the apex of this structure is the Commissioner of Baseball, at the present time respondent Bowie K. Kuhn. The twenty-four defendant Major League Clubs (plus two more which were not named as defendants in this action) make up the "Major Leagues". There are two Major Leagues, the American League and the National League. In addition to the Major Leagues there are nineteen other Leagues which in turn

belong to an Association known as the National Association of Professional Baseball Leagues (Minor Leagues). The various Major and Minor League Clubs and Leagues in turn have entered into a series of agreements to govern their relationship. These agreements include:

(1) The Major League Agreement to which all Major League Clubs are parties. This Agreement establishes the Office of the Commissioner of Baseball and authorizes the issuance of certain rules relating to the conduct and relationship of the Major League clubs and players.

(2) The Professional Baseball Agreement ("PBA") to which the American and National League on the one hand, and the National Association of Professional Baseball Leagues on the other, are parties. The PBA authorizes the issuance of certain rules relating to the conduct and relationship of the Minor Leagues or National Association Clubs, players and the Major Leagues. Among the rules issued pursuant to the PBA are those relating to:

(a) the protection of National Association territory (Professional Baseball Rule 1(a)).

(b) the number of National Association Clubs each Major League Club "shall support, either through ownership or Player Development Contract" (Professional Baseball Rule 1(c), and

(c) the form of player development contract between Major League and National Association Clubs (Professional Baseball Rule 10).[1]

---

[1]Player development contracts are agreements between individual Major League Clubs and National Association Clubs by which Major League Clubs support National Association Clubs financially and otherwise.

During the 1975 and 1976 seasons the Petitioner operated in the Northwest League, a Class A National Association League. Petitioner entered into a player development contract with the Oakland A's of the American League covering each of Petitioner's two years of operation. In October, 1976 the Oakland A's terminated the player development contract, pursuant to its terms and in accordance with the Professional Baseball Rules. The propriety of the termination was expressly recognized by Petitioner's president, Michael Manning, who in October, 1976 wrote a letter to the Northwest League's President setting forth the circumstances of his club's decision to terminate operations. In that letter, after stating that financial losses made it impossible "to continue to operate in Boise or elsewhere," Mr. Manning stated that "we have informed the Oakland Athletics of the situation" and that as a result Oakland had informed Petitioner it was terminating the player development contract with Petitioner.

In October, 1976, and pursuant to Professional Baseball Rule 1(a), the American League filed notice of its intention to acquire the Seattle, Washington territory for the American League expansion Club, which became the Seattle Mariners and commenced operations with the 1977 baseball season. Pursuant to Professional Baseball Rule 1(a) the American League was required to pay the Northwest League (the National Association League) and the Seattle Rainiers (the National Association Club then operating in Seattle) "just and reasonable compensation" for their loss of the territory. When the American League and the Northwest League and the Seattle Club could not agree on that amount, an arbitration hearing was held, as provided for by Professional Baseball Rule 1(a). As a consequence, on November 17, 1976, an arbitration award

fixed $25,000 as "just and reasonable compensation" to the Northwest League for the loss of the Seattle territory. The American League paid the award to the Northwest League which accepted the payment and did not contest the award.

The Seattle Rainiers by contrast, contested the separate award ($60,000) in its favor by commencing an action, pursuant to 9 U.S.C. § 9 (the Federal Arbitration Act). Both the District Court for the Southern District of New York, No. 77-787 (S.D.N.Y. May 10, 1977) and the Court of Appeals for the Second Circuit, Slip opinion October 17, 1977, No. 77-7291 (2d Cir. Oct. 17, 1977) sustained the award and the validity of Professional Baseball Rule 1(a).

Approximately one year after ceasing to do business entirely, Petitioner brought this action in the United States District Court for the District of Idaho in September of 1977 to assert its broad claims against the fundamental operations of Organized Baseball, alleging (1) that such operations constitute violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2), (2) that Respondents violated an implied duty to the Minor Leagues and Petitioner not to overrun the Minor Leagues and Clubs, (3) that the Respondents tortiously interfered with contractual negotiations that Petitioner was conducting with parties in Medicine Hat, Alberta, Canada, and (4) that Respondents had breached contractual obligations based on Professional Baseball Rule 1(a) concerning inclusion of minor league territory in the Major Leagues.

The District Court granted summary judgment for Respondents (see Memorandum Decision and Order, Petition, Appendix B, pp. A-6 to 10), and, on appeal, the Court of Appeals for the Ninth Circuit affirmed the judgment (see Petition, Appendix A, pp. A-1 to 5).

ARGUMENT

There is no question presented by the Petition that would warrant the grant of a writ of certiorari here, and Petitioner has not advanced any valid reason for granting the writ. Petitioner does not claim that the decision below conflicts with any decision of any other Court of Appeals or of this Court. Indeed, the only federal question presented is whether the fundamental operations of baseball, in the absence of Congressional action, is within the scope of the federal antitrust laws, a question that has already been decided consistently several times by this Court. *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Kowalski* v. *Chandler,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Corbett* v. *Chandler,* 346 U.S. 356, reh. den. 346 U.S. 917 (1953); *Flood* v. *Kuhn,* 407 U.S. 258 (1972). The other questions presented are all questions of state law which are of no general importance. The questions with respect to an implied duty of the Major Leagues to the Minor Leagues, and Professional Baseball Rule 1(a), are of importance only to those in Baseball; and the question with respect to tortious interference is limited to the facts of this case and concerns only the litigants.

The decision below on all four questions was correct for the reasons stated therein, and should not be reviewed by this Court.

I. THIS COURT HAS CONSISTENTLY HELD THAT THE BUSINESS OF BASEBALL IS NOT SUBJECT TO THE FEDERAL ANTITRUST LAWS, UNLESS AND UNTIL CONGRESS DETERMINES OTHERWISE

On three separate occasions, the latest being in 1972, this Court has ruled that "the business of baseball", including its fundamental and structural agreements and player control arrangements, is exempt from the federal antitrust laws. *Flood* v. *Kuhn,* 407 U.S. 258 (1972); *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356 (per curiam), reh. den. 346 U.S. 917 (1953); *Federal Baseball Club of Baltimore, Inc.* v. *National League,* 259 U.S. 200 (1922). As the Court concluded in *Toolson,* "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." 346 U.S. at 357.

Against this background, and in the absence of any intervening Congressional legislation on this subject, Petitioner's plea that this Court should once again consider a question it had throughly and definitively resolved on three prior occasions can only be regarded as frivolous.[2]

Petitioner, a minor league club which came into baseball long after the antitrust exemption had been established and reiterated, bases its plea for Supreme Court review solely on the simplistic *ipse dixit* notion that fifty-nine years of judicial precedents by this Court and lower courts are wrong, and ought to be overruled.[3]

---

[2]Indeed, the Court below stated that the appeal from the District Court's dismissal of the antitrust allegations was frivolous. (Petition, Appendix A, p. A-4).

[3]In addition to *Flood, Toolson* and *Federal Baseball,* see, e.g., *Finley v. Kuhn,* 569 F.2d 527 (7th Cir. 1978), *cert. den.,* 439 U.S. 876 (1978). *Portland Baseball Club, Inc. v. Kuhn,* 368 F. Supp. 1004, 1007 (D. Or. 1971), aff'd per curiam, 491 F.2d 1101 (9th Cir. 1974); *Salerno v. American League,* 429 F.2d 1003, 1005 (2d Cir. 1970), cert.

In *Federal Baseball,* plaintiff baseball club, a non-major league club outside of Organized Baseball, sued the two major leagues, contending, among other things, that the refusal of the two leagues to permit plaintiff to play games against the leagues' teams constituted a boycott in violation of the Sherman Act. In an opinion by Mr. Justice Holmes, the Court rejected plaintiff's claims on the ground that professional baseball is not within the scope of the federal antitrust laws (259 U.S. at 208-09).

In *Toolson,* the Supreme Court again ruled that the antitrust laws were inapplicable to professional baseball (346 U.S. at 357). *Toolson* was decided together with two companion cases, *Kowalski* v. *Chandler* and *Corbett* v. *Chandler,* supra. In *Corbett,* a minor league club, as is Petitioner here, alleged that professional baseball's structure violated the antitrust laws. After considering all three cases, the court stated:

> "In *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* 259 U.S. 200 (1922), this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.

---

denied, 400 U.S. 1001 (1971); *Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.,* 282 F.2d 680 (9th Cir. 1960) (per curiam). See also *State v. Milwaukee Braves, Inc.,* 31 Wis. 2d 699, 144 N.W. 2d 1 (1966), cert. denied sub nom. *Wisconsin v. Milwaukee Braves, Inc.,* 385 U.S. 990 (1966).

> . . . We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* supra, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." (346 U.S. at 356-7.) (Emphasis added.)

In *Radovich v. National Football League,* 352 U.S. 445, reh. den 353 U.S. 931 (1957), this Court elaborated on its decision in *Toolson* and repeated in unequivocal terms its ruling as to the inapplicability of the antitrust laws to the business of professional baseball. Explaining its rationale, the Court stated (pp. 450-1):

> "In *Toolson* we continued to hold the umbrella over baseball that was palced there some 31 years earlier by *Federal Baseball.* The Court did this because it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, led the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years." (Footnotes omitted.)

In 1972, in *Flood,* the Supreme Court held again that professional baseball is exempt from the antitrust laws. Although the *Flood* case involved an antitrust challenge to Baseball's reserve system, the Court did not confine its holding to that narrow aspect of professional baseball:

> "We repeat for this case what was said in Toolson:
>
> " 'Without re-examination of the underlying issues, the [judgment] below [is] affirmed on the authority of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs,* supra, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.'
>
> "And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say here again in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action." (407 U.S. at 285).

Congresional action in response to the decisions of the Supreme Court confirms that the business of baseball as a whole is exempt from the federal antitrust laws. As the Court observed in *Flood:* "Since *Toolson* more than 50 bills have been introduced in Congress relative to the applicability or nonapplicability of the antitrust laws to baseball" (407 U.S. at 281), but none was passed. Based on its thorough review of Congressional action during this period, the Court concluded that it would be improper to alter the antitrust immunity set forth in *Federal Baseball* and *Toolson* because:

> "Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has

> clearly evinced a desire not to disapprove them legislatively." (407 U.S. at 283-84.)

In the nine years since *Flood,* Congress has still taken no action on this matter, thereby demonstrating again "by its positive inaction" that it desires "not to disapprove them [the *Federal Baseball, Toolson* and *Flood* decisions] legislatively."

All the reasons upon which the decision in *Flood* was based in 1972 are equally extant today.

Accordingly, we submit that there is no basis for the Court to review the lower court's unanimous affirmance of the dismissal of Petitioner's antitrust claim.

II. THE BUSINESS OF BASEBALL IS NOT SUBJECT TO STATE REGULATION BY IMPOSITION OF AN IMPLIED DUTY UNDER STATE COMMON LAW.

Petitioner contends that if Baseball is not subject to federal antitrust law then there exists an implied duty upon the Major Leagues to permit the Minor Leagues to operate independently. Such a result would require the abrogation of various agreements freely entered into between the Major Leagues and the Minor Leagues and the rules promulgated pursuant to such agreements by the parties thereto. Petitioner does not contend in this connection that the Major Leagues violated any such agreements or rules but rather that the entire structure of Organized Baseball, through application of state common law, cannot be permitted to operate as established.

As correctly stated by the Court of Appeals:

> "This argument [application of an implied duty] was also properly rejected by the lower court. Application of state law liability to major league

> baseball was expressly rejected in [*Flood*]. . . . The Supreme Court stressed the need for uniform national regulation of baseball and indicated that state regulation would be an undue burden on interstate commerce." (Petitioner Appendix A, p. A-3.)

It would be difficult to imagine a greater burden upon interstate commerce or serious disruption of uniform regulation than through the application of such a nebulous concept as an "implied duty" enforced independently by each of the approximately 40 states in which Organized Baseball operates.

Whether it be imposition of state antitrust statutes or implied duties under state common law, the decision of this Court in *Flood* controls, and Petitioner's claim must be rejected.

III. THERE WAS NO TORTIOUS INTERFERENCE BY RESPONDENTS WITH PETITIONER'S CONTRACT NEGOTIATIONS.

Petitioner claims that the Respondents tortiously interfered with contract negotiations it sought to conduct with persons in Medicine Hat, Alberta, Canda, to move the team there when the Oakland Club terminated its Player Development Contract with Petitioner. The claim is without any justification whatever.

Petitioner, prior to bringing this action, admitted that financial losses made it impossible to continue operations in Boise or elsewhere, and that upon advising the Oakland Club of the situation, Oakland terminated its player development contract with Petitioner.

As the Court of Appeals held in rejecting this claim of Petitioner, the Oakland Club had the right to terminate

the contract and had no duty to continue it, and no rights of Petitioner were violated (Petition, Appendix A., p. A-3).

The decision below on this purely state law claim is limited to the facts of this case, affects only the parties to this litigation, and presents no issue for review by this Court.

IV. PETITIONER'S CLAIM BASED ON PROFESSIONAL BASEBALL RULE 1(a), AN INTERNAL BASEBALL RULE, PRESENTS NO QUESTION FOR REVIEW BY THIS COURT.

Finally, Petitioner has asserted a state law claim based on Professional Baseball Rule 1(a), because the American League added a club in Seattle commencing with the 1977 season. The City of Seattle had been in the territory of the Northwest League of which Petitioner was a member in 1975 and 1976.

This Rule required the payment of just and reasonable compensation to both the Seattle Rainiers, the minor league club, and its league, the Northwest League, when the American League occupied the Seattle territory.

Petitioner claims that the Respondents failed to abide by and violated this Rule by the expansion into Seattle, and thus breached their contract with the minor league clubs, including Petitioner. However, as the Court of Appeals held, such claim was "totally without merit"; all the conditions and procedures of that Rule were followed when that expansion occurred; such procedures and proceedings under the Rule had previously been upheld by the Court of Appeals for the Second Circuit in *Seattle Rainiers Baseball Club v. American League,* No. 77-7291, slip opinion (10/17/77), affirming No. 77-987 (S.D.N.Y.

5/10/77); and, if Petitioner had any claim under the Rule, it was against the Northwest League which had been fully compensated under the Rule (Petition, Appendix A, pp. A-3, 4).

Petitioner also, after having made this claim based on violation of the Rule, inconsistently seems to imply that the Rule itself is invalid. However the validity of Rule 1(a) has been judicially determined not only in the *Seattle Rainiers Baseball Club* case, *supra,* but prior thereto in *Portland Baseball Club v. Kuhn,* 368 F. Supp. 1004 (D. Or. 1971), aff'd per curiam, 491 F.2d 1101 (9th Cir. 1974).

In any event it is manifest that the application and interpretation of an internal rule of Organized Baseball, held valid by the Courts of Appeals of two Circuits, presents no issue for review by this Court.

CONCLUSION

For all the foregoing reasons it is respectfully submitted that the decision of the Court of Appeals was clearly right and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES P. GARNER
WARREN DAANE
BAKER & HOSTETLER
3200 National City Center
Cleveland, Ohio 44114

LOUIS L. HOYNES, JR.
WILLKIE FARR & GALLAGHER
One Citicorp Center
153 East 53rd Street
New York, New York 10022

Attorneys for Respondents